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**Permanent Select Committee  
on Intelligence  
U.S. House of Representatives**  
September 6, 2019

**VIA ELECTRONIC MAIL**

Michael Flynn

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Dear Mr. Flynn:

On June 12, 2019, the House Permanent Select Committee on Intelligence (the “Committee”) issued a subpoena to you for documents and testimony relevant to the Committee’s ongoing investigation into foreign interference in the U.S. political process during and since the 2016 presidential election. Notwithstanding repeated efforts by Committee Staff to engage with your counsel and accommodate your adjournment requests, you have, to date, failed to comply with the Committee’s subpoena or cooperate with the Committee’s efforts to secure your compliance. Accordingly, the Committee now commands you to appear for testimony on September 25, 2019, at 9:30 a.m.

## **Background**

On June 12, Committee Staff served the subpoena on your attorney, Sidney Powell, Esq., via email and U.S. mail. The subpoena required the production of responsive documents by June 26, 2019, and testimony on July 10, 2019. On June 13, Committee Staff emailed Ms. Powell to confirm acceptance of service of the subpoena on your behalf. On June 14, after failing to receive any response from Ms. Powell, Committee Staff called her to confirm acceptance of service. During the telephone conversation, Ms. Powell stated that she refused to accept service and abruptly hung up the phone. On June 17, Ms. Powell emailed Committee Staff, stating that she was “consulting with the Department of Justice” regarding the subpoena and still would not accept service on your behalf. On June 18, Committee Staff emailed Ms. Powell and stated that because she had refused to accept service of the subpoena, the Committee would begin to make arrangements to effectuate personal service on you. On June 19, Ms. Powell informed the Committee that she would accept service. In response to Ms. Powell’s request to adjourn the subpoena return dates by two weeks, the Committee subsequently extended the production deadline until July 8 and adjourned the hearing until the week of July 22. Committee Staff further requested that Ms. Powell provide the dates of any conflicts that week. On June 24, Ms. Powell emailed Committee Staff and stated that you would be unable to testify the week of July 22 because you expected to be called as a Government witness at the trial in *United States v. Rafiekian*, 18 Cr. 457 (E.D.V.A.).

On July 8—the operative production deadline—Ms. Powell sent a letter to the Committee stating that you “are not in possession of any responsive materials that have not already been produced to [the] Committee, the House Committee on Oversight and Government Reform[,] and the House Committee on the Judiciary, or that has not been seized by the Justice Department.” Ms. Powell “encourage[d]” the Committee “to begin by inventorying the materials already provided to Congress and the Government.” On July 9, Committee Staff responded and noted that because the Department of Justice had indicated that it no longer intended to call you as a witness at the *Rafiekian* trial, the Committee still sought your testimony during the week of July 22. The Department of Justice also informed the Committee on July 9 that it had no concerns with your testimony before the Committee proceeding at a time convenient for the Committee. On July 10, having received no response from your counsel, Committee Staff emailed your counsel and stated that the Committee had scheduled your testimony for July 24 and requested a telephone call to discuss the hearing and your outstanding document production. Your counsel did not respond.

On July 15, Committee Staff again emailed your counsel to reschedule your testimony for July 26 due to a scheduling conflict with Special Counsel Robert Mueller III’s testimony before the Committee on July 24. Committee Staff again requested to speak with your counsel regarding your testimony and outstanding document request. Ms. Powell responded that you

were still “on the witness list” for the *Rafiekian* trial and that the second full week of August was the “earliest possible date” you could testify before the Committee. Your counsel did not respond to the Committee Staff’s efforts to discuss your failure to produce any documents pursuant to the subpoena. On July 16, Committee Staff again tried to call Ms. Powell and then emailed her to schedule a telephone call to discuss scheduling your testimony and your outstanding document production. Ms. Powell did not respond. On July 18, Committee Staff emailed Ms. Powell again, reiterated the request to speak by telephone, and further stated that if the Staff did not hear from her by July 19 at noon, the Committee would proceed with a hearing on July 26 and that you would be expected to appear in person. Ms. Powell replied by email late that night, stating that neither you nor she could appear at a hearing on July 26. The next morning, Committee Staff emailed Ms. Powell to schedule a telephone call to discuss the rescheduling of your testimony and stated that if alternative arrangements were not made, the hearing would go forward on July 26.

On July 20, Ms. Powell sent a letter to the Committee stating that you are “not in a position to testify before [the Committee] prior to the final resolution of criminal charges against [you]” and that if called you “will invoke the Fifth Amendment.” Ms. Powell requested that you be excused from appearing in person and noted that neither you nor she could appear until after August 7. With respect to your outstanding document production, Ms. Powell stated that “we are happy to discuss these issues with [the Committee staff],” but requested to “schedule a time to confer after the completion of” the *Rafiekian* trial. On July 23, after the conclusion of the *Rafiekian* trial, Committee Staff emailed Ms. Powell to schedule a telephone call to discuss your testimony and outstanding document production. Later that day, Ms. Powell replied, stating that your “position on [your] testimony has not changed” and that David Warrington, Esq., who represents the Flynn Intel Group (“FIG”), would “be in contact” with Committee Staff regarding your document production. (To date, Mr. Warrington has not contacted the Committee.) Committee Staff responded to Ms. Powell’s email, copying other attorneys representing you as well as Mr. Warrington, and reiterated a request to schedule a telephone call to discuss your testimony and outstanding document production. None of your counsel responded.

Approximately three weeks later on August 15—after the date Ms. Powell had indicated that you and she would be available to appear at a hearing—Committee Staff attempted to reach Ms. Powell and, separately, co-counsel Jesse Binnall, Esq., by telephone. Neither returned messages left with their offices. On August 16, Committee Staff emailed Ms. Powell and Mr. Binnall and requested to speak with them regarding scheduling your testimony. Staff stated that if your counsel refused to speak by telephone, the Committee would have no choice but to schedule a date for your testimony without their input. Committee Staff also advised that Mr. Warrington had not been in touch regarding your outstanding document production. Committee Staff further noted that the subpoena was directed to you in your personal capacity—not to FIG—and, therefore, Ms. Powell and Mr. Binnall were the attorneys responsible for your production given that they represent you in your personal capacity.

On August 22, your counsel sent another letter to the Committee. With respect to your document production, your counsel stated that you have “already provided large caches of documents to several congressional committees,” including to the Committee, on behalf of yourself and FIG. Your counsel stated that your responses to inquiries from Congress and the Special Counsel’s Office has been “financially exhausting” and that you do “not have the resources to comply” with additional Congressional requests. Your counsel suggested that the Committee “contact the Department [of Justice] for whatever materials it is willing to produce” and “perform [its] own searches of the massive document sets that have already been sent to the various Committees.” With respect to your testimony, your counsel reiterated that you intend to invoke your Fifth Amendment right against self-incrimination in response to “*any* questions other than confirming [your] name” (emphasis in original), at least until the criminal case against you has concluded.

### **Failure to Comply with the June 12 Subpoena**

Your counsel’s communications with—and refusal to even speak with—the Committee Staff exhibit a troubling degree of unprofessionalism. The suggestion that the Committee obtain documents responsive to the June 12 subpoena from the Department of Justice, or from other congressional committees, demonstrates a fundamental misunderstanding of the Committee’s jurisdiction and constitutional oversight authority. More importantly, your counsel’s proposal is plainly insufficient to comply with your legal obligation to produce all documents and materials responsive to the subpoena that are in your personal possession, custody, or control.<sup>1</sup>

As you know, during the 115<sup>th</sup> Congress, you and your previous counsel refused to produce any documents in your individual capacity on the ground that such act of production would tend to incriminate you. Although FIG produced some documents to the Committee in response to a subpoena issued by the Committee during the previous Congress, that production does not relieve you of your current obligation fully to comply with the June 12 subpoena. Moreover, the June 12 subpoena is directed to you in your individual capacity, not to FIG, and is much broader than the subpoenas issued to you and FIG during the 115<sup>th</sup> Congress. Accordingly, you remain non-compliant with the June 12 subpoena for documents that are in your personal possession, custody, or control. It is readily apparent that your purported willingness to cooperate with the Department of Justice has not, to this point, extended to the Committee.<sup>2</sup>

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<sup>1</sup> As the instructions attached to the June 12 subpoena explain, to the extent any document responsive to the subpoena was, but no longer is, in your possession, you are required to state, among other things, how the document was disposed of and identify the individual or entity currently in possession of the document.

<sup>2</sup> As noted above, the Department of Justice has informed the Committee that it has no objection to you testifying before the Committee.

Moreover, your counsel's assertion that you intend to invoke your Fifth Amendment right against self-incrimination in response to "any questions other than confirming [your] name" is insufficient to relieve you of your obligation to testify before the Committee. The Fifth Amendment privilege must be invoked in response to specific questions or topics that might tend to incriminate you if answered truthfully. Your counsel's blanket invocation of the Fifth Amendment—without having heard any of the questions that the Committee members may ask you and having refused to discuss the potential topics of your testimony with Committee Staff—is, therefore, inadequate. Such a blanket assertion of the Fifth Amendment does not allow the Committee to assess the legitimacy of your privilege claim or determine whether there are certain topics relevant to the Committee's investigation about which you might testify without invoking the privilege. Accordingly, if you intend to assert your Fifth Amendment right against self-incrimination, your counsel must engage with the Committee Staff to discuss the potential subjects of your testimony so that the Committee may determine whether you have a good faith basis to assert your Fifth Amendment right. Until that occurs, you remain obligated to appear in person and testify before the Committee.

Accordingly, pursuant to the June 12 subpoena, you are hereby required to produce all documents and other materials responsive to the subpoena in your personal possession, custody, or control no later than **September 18, 2019**, and appear before the Committee to provide testimony under oath on **September 25, 2019 at 9:30 a.m.** Should you fail to comply with these obligations, the Committee will have no choice but to consider appropriate measures to enforce the subpoena.

Please have your counsel contact Daniel Goldman or Daniel Noble of the Majority Staff at (202) 225-7690 to discuss further.

Sincerely,  
  
Adam B. Schiff  
Chairman

Cc: Hon. Devin Nunes  
Ranking Member